

EPA 6/c

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 Federal Plaza
New York, New York 10278

County of Orange, New York)
and Orange County Department)
of Public Works)
Proceeding Pursuant to Section 309(a))
of the Clean Water Act, 33 U.S.C.)
Section 1319(a))

AMENDMENT TO
ORDER ON CONSENT
EPA-CWA-II-92-155

Pursuant to Section 309(a) of the Clean Water Act (the "Act"), 33 U.S.C. §1319(a), under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, and by him delegated to the Regional Administrator of the Region II Office of the EPA, which authority has been duly redelegated to the Director of the Water Management Division of the Region II Office of the EPA, and on the Consent of the County of Orange, New York and the Orange County Department of Public Works ("Orange County"), the Director issued Order No. EPA-CWA-II-92-155 on July 30, 1992 (the "Order on Consent"). Orange County violated the Order by failing to obtain control or ownership of the approved mitigation site(s) by the date required by Ordered Provision 4 of the Order. On consent of Orange County, the Director now issues this Amendment to that Order (the "Amended Order").

The first sentence of Ordered Provision 4 of the Order on Consent is modified as follows:

4. Orange County shall, by November 30, 1993, obtain control or ownership of the approved mitigation site(s), and shall have concluded all eminent domain proceedings necessary to obtain control or ownership of the approved mitigation site(s).

The first sentence of Ordered Provision 5 of the Order on Consent is modified as follows:

5. By November 30, 1993, Orange County shall develop and submit an EPA approved Detailed Mitigation Plan to EPA for each approved mitigation site(s).

The first sentence of Ordered Provision 5.C. of the Order on Consent is modified as follows:

5.C. a provision that Orange County will monitor the site for five years, and will prepare a yearly report and submit it to EPA, with a copy furnished to the Corps, by November 15 of each year.

Ordered Provision 7.A. of the Order on Consent is modified as follows:

7.A.1. Orange County shall complete all work identified in the Detailed Mitigation Plan(s) by June 30, 1994, except that the monitoring reports and 85% survival rate level must be maintained in compliance with Ordered Provision 5 above.

7.A.2.a. In the event that Orange County fails to complete all work identified in the Detailed Mitigation Plan(s) by June 30, 1994, Orange County shall obtain control or ownership of an additional ten acre mitigation site by February 28, 1995. Acceptance of the additional mitigation site location shall be contingent upon EPA inspection and approval. By September 30, 1994, Orange County shall identify for EPA the potential additional ten acre mitigation site and shall complete and submit to EPA, a Wetland Functional Assessment and a Conceptual Mitigation Plan for the additional ten acre mitigation site. Orange County shall develop and submit an EPA approved Draft Detailed Mitigation Plan to EPA for the additional ten acre mitigation site by November 30, 1994, and a Final Detailed Mitigation Plan by February 28, 1995 in accordance with the conditions contained in Ordered Provision 5.A.-5.D.

7.A.2.b. In the event Orange County fails to complete all work identified in the Detailed Mitigation Plan(s) by June 30, 1994, in accordance with subsections 7.A.1 and 7.A.2.a. above, Orange County shall complete all work identified in the Detailed Mitigation Plan(s) by September 5, 1994.

7.A.3. Orange County shall complete all work identified in the Detailed Mitigation Plan(s) for the applicable additional ten acre mitigation site referenced in 7.A.2.a. by August 31, 1995.

7.A.4.a. In the event Orange County fails to comply with any of the provisions of Ordered Provision 7.A.1.-7.A.3 above, Orange County hereby consents to payment of a stipulated penalty in the amount of Five Hundred (\$500.00) Dollars per day for each of the first sixty (60) days that Orange County fails to comply and One Thousand (\$1,000.00) Dollars per day for every day thereafter, commencing with day sixty one, that Orange County fails to comply with any of the provisions of Ordered Provision

7.A.1.-7.A.3 above, subject to Ordered Provision 8 of the Order on Consent.

7.A.4.b. The land acquisition(s) required herein shall be enforceable, and the penalties stipulated to herein shall be collectible through the commencement of a civil action against Orange County for violation of the Act, the Order on Consent and this Amended Order, and the entry of judgment against it, in the United States District Court for the Southern District of New York. Such action shall be commenced pursuant to Section 309 of the Act, 33 U.S.C. Section 1319.

7.A.4.c. Notwithstanding any other provisions of the Order on Consent or this Amended Order, EPA shall not be deemed bound or limited by the Order or this Amended Order in the amount of civil penalty which can be sought in civil action commenced for violation of the Order or this Amended Order and the Act, EPA may seek civil penalties greater than One Thousand (\$1,000.00) Dollars for each day that Orange County's violation continues.

7.A.4.d. EPA may also seek additional and other relief against Orange County for its violations of the Order on Consent or this Amended Order and the Act. However, in the event that a civil action is commenced against Orange County for penalties in excess of One Thousand (\$1,000.00) Dollars per day or for any other relief sought by EPA, Orange County will have the right to raise defenses to such penalties or relief.

7.A.4.e. Nothing in the Order on Consent or this Amended Order shall affect the right of the United States to commence against Orange County, or the right of Orange County to defend itself against, any criminal action.

7.A.4.f. Any penalties accrued and payable pursuant to the above shall be paid within 30 days of the entry of judgment against Orange County in a civil action for the violation of the Order on Consent or this Amended Order and the Act commenced by the United States pursuant to Section 309 of the Act, 33 U.S.C. Section 1319, and payment shall be made by certified check payable to "Treasurer of the United States" in a manner specified in the judgment entered.

The last sentence of Ordered Provision 7 of the Order on Consent is amended as follows:

If Orange County fails to comply with any of the terms of this Amended Order, and EPA has not granted Orange County an extension of time pursuant to Ordered Provision 8 of the Order on Consent, Orange County shall immediately cease and desist its operation and use of the Landfill Expansion. EPA reserves all of its rights and remedies in such event.

Orange County hereby affirms its consent to this Amended Order. This Amendment to Order EPA-CWA-II-92-155 does not constitute a waiver from compliance or modification of the Act. This Amendment to Order EPA-CWA-II-92-155 is an enforcement action taken by EPA to ensure swift compliance with the Act.

FOR THE ENVIRONMENTAL PROTECTION AGENCY

Richard L. Caspe, P.E.
Director, Water Management Division

FOR THE COUNTY OF ORANGE, NEW YORK
AND ORANGE COUNTY DEPARTMENT OF
PUBLIC WORKS IN ACCORDANCE WITH
ATTACHED RESOLUTION OF THE ORANGE
COUNTY LEGISLATURE

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